



Michigan Supreme Court

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MEMORANDUM

DATE: February 25, 2005

TO: Friends of the Court
cc: Chief Circuit Judges
Presiding Family Division Judges
Circuit Court Administrators
Family Division Administrators

FROM: Daniel J. Wright

RE: SCAO Administrative Memorandum 2005-03 (supercedes 2004-14)
Medical Policy for Friends of the Court

The State Court Administrative Office (SCAO), and specifically SCAO's Friend of the Court Bureau, develops guidelines for the conduct, operations, and procedures of all friend of the court (FOC) offices. Each FOC shall take all necessary steps to adopt office procedures to implement the recommendations of the bureau. See MCL 552.503(7).

State and federal laws, policies, and regulations govern the establishment and enforcement of divorced or never married parents' medical care obligations for their children. This policy outlines the criteria and steps to establish and enforce medical support obligations in child support orders in FOC cases.

Should you have any questions regarding this policy, you may contact Dan Wright or Kelly Howard at (517) 373-5975 or by email at wrightd@courts.mi.gov or howardk@courts.mi.gov.

A. REQUIREMENTS IN COURT ORDERS

Michigan law requires that every new or modified child support order contain a clause on medical insurance coverage. This memorandum is intended to assist friend of the court offices, by examining this law and recent changes in the medical support provisions of the Michigan Child Support Formula.

1. **MCL 552.605a enunciates the medical insurance requirement. It states, first of all, that child support orders in friend of the court cases shall compel each party to keep the FOC notified of the following information:**
 - a. The name and address of his or her current source of income; and
 - b. Any health care coverage available to the parent as a benefit of employment or otherwise maintained by the parent. This information must include:
 - i. The name of the insurance company, nonprofit health care corporation, or health maintenance organization;
 - ii. The policy, certificate, or contract number; and
 - iii. The names and birth dates of persons who are covered by insurance.
2. **MCL 552.605a also decrees that child support orders shall require that *one or both parents* obtain or maintain for their children health care coverage that is available to them at a reasonable cost, as a benefit of employment. The clause adds that self-employed parents who have health insurance coverage must obtain dependent coverage if it is available at a reasonable cost.¹**
3. **The 2004 Michigan Child Support Formula (MCSF), effective 10/01/04, recommends that the medical insurance clause in child support orders specify:**
 - a. Each parent's share of qualified uninsured medical expenses,² and
 - b. The projected amount of annual ordinary health care expenses.
4. **We recommend that child support orders also specify:³**
 - a. The parent who is responsible to provide health care coverage for the children.
 - b. The maximum "reasonable cost" of providing health care insurance;
 - c. Each parent's share of the monthly health insurance premium; and

¹ SCAO recommends that court orders specify which parent has responsibility to maintain medical care coverage, as opposed to generic "one or both" language. Specifying which parent is required to maintain coverage will avoid duplicate coverage and costs, and prevent unnecessary enforcement actions.

² This is the percentage that each parent is responsible for paying toward ordinary and extraordinary uninsured medical expenses. It is based on the parent's share of total family income.

³ The Uniform Support Order, SCAO form FOC 10, has specific language stating which parent is responsible for carrying medical insurance coverage, as well as many of the other factors listed.

- d. The type of health insurance that will be provided (i.e. employment, private).

B. HEALTH CARE COVERAGE

1. Establishing Medical Support

Although child support orders must contain a medical insurance provision, FOC offices are not required to investigate medical insurance issues unless there is a dispute. Where the parties agree on how they will provide the required health care coverage, the FOC can merely record the agreement in the order. In such cases, the FOC's main concern should be to include sufficient information to avoid unwarranted computer enforcement measures, such as the National Medical Support Notice. For example, it is recommended, *but not required*, that the order identify the parent who is maintaining coverage; otherwise, the NMSN may be sent automatically to the employer when a data match indicates the *non-providing* parent has obtained a new job.

Where medical support is in dispute, the FOC should recommend, and the order should specify, the respective health insurance obligations of the parties, based on the requirements of the statute and the MCSF criteria (see Appendix A)

2. Reasonableness of Cost of Coverage

The standard of "reasonable cost" for providing health care insurance coverage is defined in the MCSF. The Formula states that the cost is "reasonable" where it does not exceed *five* percent of the parent's *gross income*. The Formula adds that a parent whose net income is below 133% of the federal poverty level, or whose resident child is covered by Medicaid, should not be ordered to provide or even contribute toward insurance coverage, unless it is available through employment without employee contribution. Further, the cost of insurance is "not reasonable," if the parent's total support obligation (the sum of base support, day care, uninsured health care and insurance premiums) *exceeds* 50% of the parent's net income.

Where the cost of health care insurance exceeds what is "reasonable," an order requiring that parent to contribute to the purchase of insurance constitutes a *deviation* from the MCSF. Michigan law requires that a deviation from the Formula recommendation be supported by a finding that the Formula would produce an *unjust* or *inappropriate* result.

3. No Coverage Available at a Reasonable Cost

What should be done in cases where neither parent has access to a reasonably-priced health insurance policy through an employer? One possible option is private insurance. The court might order one parent to purchase an individual or group policy and then divide the cost between both parents.⁴ If the expense to the parents exceeds the "reasonable cost" standard, enrollment in MI-Child or another health care assistance program will satisfy the insurance coverage requirement, provided the order compels

⁴ The definition of support includes "...payment of the expenses of medical, dental, and other health care..." This is not limited to employment-sponsored health care coverage. MCL 552.502a(h)(i)
MCL 552.517 requires the FOC to review the order if there are reasonable grounds to believe that health care coverage is available.

parties to notify the FOC and purchase private insurance where it becomes available at a reasonable cost.

4. Health Care Premiums

The MCSF directs that the cost of providing health insurance for the children be apportioned between the parents. The Formula says the portion of the net determinable premium attributable to coverage of the children should be divided between the parents according to their incomes. The 2004 CSF proposes *one way* of dividing the premium and making corresponding adjustments in the support obligation. FOC offices are free to develop their own method of doing this. When a parent is providing health insurance for children other than those identified in the support order, the premium paid for coverage of those other children should be deducted from the parent's income before his or her support obligation is calculated in the case at hand.

5. Third Party Insurance Coverage

The MCSF recognizes there are cases in which the only available source of health care coverage is a third party (e.g., a subsequent spouse). If a third party is willing to provide insurance on a parent's behalf, the order should identify the parent who is maintaining coverage but allow the obligation to be fulfilled through the third party's insurance policy. Such a clause should add, however, that the medical support obligation will be reviewed if the third party's coverage is withdrawn or otherwise becomes unavailable.⁵

6. Maintaining Health Care Coverage Information in MiCSES

A parent ordered to maintain health care coverage must inform the FOC of health care coverage that is available as a benefit of employment or that the parent purchases directly (see section A(1), above).

The FOC should enter the health care coverage information into MiCSES. If no information is included in the system, its absence may trigger computer enforcement measures that are unwarranted.

C. ENFORCING HEALTH CARE COVERAGE

The 2004 Child Support Formula contains two significant changes concerning health care coverage. One is that *both* parents are obligated to contribute towards health care insurance premiums. The other is that the estimated cost of ordinary (uninsured) medical expenses (\$289 per child per year – the national average) should be added to the monthly support payment. Both insurance premiums and uninsured expenses should be apportioned between the parents according to their incomes. For example, if the custodial and non-custodial parents had the same annual income, then the cost of health coverage for the children and uninsured medical expenses would be split evenly between them. Likewise, one-half of the estimated cost of uninsured expenses would be added to the NCP's support payments (see Section D (2)(a)(i), below). In *shared economic responsibility* cases, FOC offices are free to use the designations of custodial and non-custodial parent for administrative efficiency, and the parties may elect to forego this charge, particularly where there is no exchange of support.

⁵ Alternatively, the order could require one of the parents to obtain health care coverage immediately upon the third party coverage becoming unavailable.

These changes are intended to allow more parents to obtain health care coverage for their children and to significantly reduce the volume of medical enforcement disputes.

When enforcement is necessary, the FOC has several options for enforcing the court-ordered health care coverage.

1. National Medical Support Notice (NMSN)

State and federal law require use of the NMSN to enforce the health care coverage provisions of child support orders.

a. NMSN Process Initiated

Where a parent has been ordered to provide health care coverage for a child, Michigan law requires the FOC to send a NMSN to the parent's employer within two business days of being notified that the parent has obtained employment. Notice may be received from the state's directory of new hires or by other means. The NMSN should go out whenever the parent has a new job. MiCSES can automatically generate and send the NMSN to the employer.

States are not required to use the NMSN where the court has ordered insurance other than employer-based health care coverage.

b. Employer Responsibility

The NMSN requires the employer to respond to the FOC within 20 business days health care coverage is unavailable for any of the following reasons:

- i. The employer does not maintain or contribute to a health care plan that provides dependent or family coverage.
- ii. The parent is among a class of employees that are not eligible for family health care coverage under any group health plan maintained by the employer or to which the employer contributes.
- iii. Health care coverage is no longer available because the employer no longer employs the parent.

If none of the above exceptions apply, the employer must forward the NMSN to the health care plan administrator within 20 business days. The NMSN directs the plan administrator to enroll the child in the parent's health care plan and requires the employer to deduct the premiums (if any) from the parent's income.

The employer still must comply with the income withholding limitations in the Consumer Credit Protection Act (CCPA) when deducting the premium from the parent's income. This means that, if the parent's total support obligation (including base support, child day care, ordinary medical, and premiums) exceeds the CCPA limits, the employer cannot deduct the premium from the parent's income and the child need not be enrolled in the insurance plan.

c. Plan Administrator Responsibility

Within 40 business days after the date of the notice the plan administrator must notify the FOC of the following:

- i. Whether the child is covered under the plan; and
 - ii. Either the effective date of the coverage, or any necessary steps to be taken by the custodial parent to effectuate the coverage.⁶
- d. **FOC Action if NMSN Rejected by Employer/Plan Administrator**
If the employer or plan administrator rejects the NMSN,⁷ the FOC may need to review the health insurance requirement in the order (see Section A(1), above).
- e. **Parent Objection to NMSN**
A parent may object to the NMSN. The objection must be submitted in writing to the FOC and must state the reason for objection. The only recognized reasons for objection are: that the NMSN reflects a mistake of fact concerning a person's identity or responsibility to provide health insurance, that the cost of health care coverage is unreasonable, or that the parent already maintains the ordered coverage.⁸
- f. **FOC Action in Response to NMSN Objection**
If a parent objects to the NMSN, the FOC should look at the health insurance clause in the order. If the order reflects a mistake of fact concerning the identity of a person, the obligation to maintain health care coverage, or whether the parent already maintains coverage, the FOC should immediately cancel the NMSN and notify the employer.

If the objection concerns the cost of coverage, the FOC should compare the cost of the insurance against the amount deemed reasonable in the support order. If the order does not specify an amount, the FOC should refer to the definition of "reasonable cost" in the 2004 MCSF.

If the NMSN is canceled due to a mistake of fact or unreasonable cost, the FOC should review the health insurance requirement in the order (see Section A(1), above).

If the cost of coverage does not exceed the reasonable cost specified in the order, and there is no mistake of fact, the objection must be denied. The parent may file a motion with the court to modify the health care coverage requirement in the order. This is true even if the order requires both parents to maintain insurance, and one parent maintains full coverage. In that circumstance, both parents remain responsible for maintaining coverage until the court order is changed.

⁶ The custodial parent must contact the other parent or the employer to obtain information on the plans offered. Federal regulations require a IV-D agency to assist a parent with selecting health care coverage if multiple options are available. 45 *CFR* 303.32(c)(8). If the employed parent does not select an option, federal regulations require the employer to enroll the child in the employer's default insurance plan.

⁷ If the NMSN is rejected due to a technical error, the FOC should fix the error and send the NMSN back to the employer.

⁸ The FOC cannot address other legal issues.

2. **FOC Enforcement**

Irrespective of the NMSN process (in which the system automatically generates a notice upon finding a new-hire data match), if the FOC discovers that a parent has failed to obtain or maintain court-ordered health care coverage, the FOC must do either of the following:

- (a) Initiate contempt proceedings against a parent who fails to maintain court ordered health care coverage.
- (b) If the order is not qualified,⁹ send a notice of non-compliance to the parent. The notice must include all of the following information:
 - i. That the FOC will notify the parent's employer to enroll the children in the employer's health care plan and deduct premiums from the parent's income unless the parent does one of the following within 21 days:
 - (1) Submits written proof to the FOC that the child is enrolled in a health care plan.
 - (2) Requests a hearing to determine the availability or reasonable cost of the health care coverage.
 - iii. That the order for dependent health care coverage will be applied to current and subsequent employers and periods of employment. *MCL 552.626(3)*

D. **UNINSURED MEDICAL EXPENSES**

1. **Qualified Medical Expenses**

Qualified medical expenses include treatments, services, equipment, and medicines associated with oral, visual, psychological, medical, dental, orthodontic, and other health-related needs provided or prescribed by health care professionals. As used in this memorandum, "uninsured medical expenses" are those qualified medical expenses that are not covered by health care plans (e.g., deductibles, co-pays, and uncovered services).

The base support obligation covers routine remedial care items, such as first aid supplies, cough syrup, vitamins, contact lens supplies, and over-the-counter items. These expenses are not qualified uninsured medical expenses.

2. **Establishing and Modifying Medical Expense Payments in Support Orders**

a. **Uninsured Medical Expenses Apportioned Between Parents**

The support order should declare each parent's responsibility to pay for qualified uninsured medical expenses, which must be apportioned between the parents based on their share of total family income. Neither parent's share may exceed 90 percent or be less than 10 percent. The percentage limits apply to both the accounting for ordinary expenses and the enforcement of extraordinary expenses. *MCSF 3.07(A)(5)*

i. **Annual Ordinary Health Care Amount**

Unless the parents agree on a different means of handling the children's uninsured health care costs, every support order should include a dollar

⁹ The Uniform Support Order includes a statement that the order is a qualified medical support order under 29 USC 1169. To fully qualify the order, the FOC must issue a National Medical Support Notice.

amount for annual ordinary medical expenses. Ordinary medical expenses include insurance co-payments and deductibles, and other qualified uninsured health care expenses. The 2004 Formula Manual contains a presumptive amount for annual ordinary expenses (\$289 per child per year – the national average). If a party knows of or anticipates higher qualified uninsured expenses for the children, the amount may be increased by court order. The amount in the order is presumed to have been spent by the custodial parent. *2004 MCSF 3.07(c)*

The non-custodial parent's share of the ordinary medical expenses is added to the support obligation or otherwise charged to the NCP. The custodial parent contributes directly when paying each expense. In *shared economic responsibility* cases, for administrative efficiency, the court or friend of the court may designate the recipient of support as the custodial parent or may designate the payer of support as the non-custodial parent. In such cases, the parties also may elect to forego this charge, particularly where there is no exchange of support.

Example: For one child, the annual ordinary health care amount in the order is \$289 (\$24.08 per month). Based on each parent's share of total family income, the order allocates 50 percent of the uninsured health care expenses to each parent. The non-custodial parent's share of ordinary expenses, \$12.04 per month, is added to the general support obligation. The custodial parent contributes directly by paying for the expenses when they are incurred.

The annual ordinary health care amount restarts every calendar year, unless the court has directed that enforcement be administered on an order-year basis. It continues with the support obligation or until further order of the court. Changes to the ordinary health care expense amount must be pro-rated for the year in which a change occurs.

Example: An order effective October 1, 2004, estimates \$289 per year in ordinary health care expenses for one child. Based on their shares of total family income, the order allocates 50 percent of the expenses to each party. Because there are three months left in the calendar year (October-December), the amount for that year is \$72.24 ($\$289/12 = \$24.08 \times 3 \text{ months} = \72.24). The parents are each responsible for contributing \$12.04 per month (the payer through the support obligation, the payee contributing directly).

When the parent's percentages are changed during a calendar year, apply the percentage in effect at the time the expense was incurred.

Example: The order is modified July 1 and sets the payer's obligation for uninsured expenses at 75% (\$18.07 per month).¹⁰ Previously, the

¹⁰ This example assumes the Annual Ordinary Expense is \$289 per year.

payer's obligation was 60% (\$14.45 per month). An expense that is incurred in June, but that does not go through the insurance process until July, is split between the parties according to the order in effect in June. The payer is responsible for 60%.

ii. **Accounting for Uninsured Medical Expenses**

The support recipient should maintain a record of qualified uninsured medical expenses. Parents can use SCAO Form FOC 13a for that purpose. In order to request reimbursement of uninsured medical expenses, the recipient must provide documentation that the actual expenses exceed the estimate in the order (see the following section, *Extraordinary Health Care Expenses*).

All qualified uninsured medical expenses assigned to the support payer are enforceable as extraordinary medical expenses (see the following section, *Extraordinary Health Care Expenses*).

If a health care expense extends between enforcement years, apply the expense to the calendar or order year in which the care was given. If the health care bill does not distinguish the expenses between enforcement years, apply the entire bill to the year in which the bill is received.

Example: The child is hospitalized December 28, 2004, through January 5, 2005. If the hospital bill lists the daily expenses, apply the December 28-31 expenses to the 2004 calendar year expense account, and the January 1-5 expenses to the 2005 calendar year expense account. If the hospital bill does not clarify daily expenses, and instead gives an amount due for the entire period of care, apply the entire amount to the 2005 expense account.

iii. **Extraordinary Uninsured Medical Expenses**

Qualified uninsured medical expenses that exceed the annual ordinary medical amount established in the order, and all qualified uninsured medical expenses incurred by the non-custodial parent, are extraordinary medical expenses. The parents are responsible for paying these uninsured medical expenses according to the percentages established for each parent in the order.

Example: For one child, the annual ordinary health care amount in the order is \$289. Based on their share of total family income, the order allocates the uninsured health care expenses between the parents at 50 percent for each party. Before requesting enforcement for medical expenses, the custodial parent must provide proof that more than \$289 was spent that year on qualified uninsured medical expenses. The payer will owe 50 percent of any net expense that exceeds the annual ordinary health care amount.

If an order requiring payment of annual ordinary health care amounts is in effect for only part of a year, the pro-rated threshold amount for that year must be reached before an expense can be considered extraordinary. For example, if the order becomes effective October 1st, the pro-rated amount for the calendar year is \$72.24 ($\$289/12 = \$24.08 \times 3 \text{ months} = \72.24). The custodial parent must provide proof that more than \$72.24 was spent between October through December on uninsured medical expenses when requesting enforcement for additional expenses.

iv. **Medicaid**

Pursuant to federal regulations, a support recipient who receives Medicaid assistance must assign medical support payments to the state. That means that the payer's portion of the ordinary expense amount will be assigned to the state. FOC offices should enter the payer's amount into MiCSES as a separate debt type capable of being certified as state-owed arrears if the support recipient goes on Medicaid.¹¹

Example: A custodial parent receives Medicaid from March 1 – September 30. The payer's share of annual ordinary health care expenses for that time period should be assigned to the state. If the Ordinary Amount is \$289 and the payer's portion is 50%, \$84.28 is assigned to the state (7 months x \$12.04 payer's monthly share = \$84.28).

3. **Court-Ordered Confinement Expenses**

a. **Costs split between parents**

Effective October 1, 2004, Michigan law allows the court to apportion the reasonable and necessary expenses of the mother's confinement and pregnancy between both parents.¹² The apportionment must be consistent with the percentage assigned to each parent for ordinary and extraordinary expenses. The apportionment also must be based on each parent's ability to pay. *MCL 722.712(1)*

b. **Exceptions**

i. **Physical or Sexual Battery**

If there has been a judicial determination in a separate proceeding¹³ that a pregnancy or complication of a pregnancy was the result of a physical or sexual battery by a party to the case, the court must apportion all of the expenses to the perpetrator of the battery. *MCL 722.712(2)*

ii. **Medicaid Paid Expenses**

If Medicaid paid for the confinement and pregnancy expenses, the court cannot apportion expenses to the mother. In these circumstances, the

¹¹ OCS has advised SCAO that the MS debt type should be used for this purpose.

¹² Upon the father's request, and before apportioning the expense, the court must require that the mother submit an itemized billing of expenses (when the expenses were not paid by Medicaid). *MCL 722.712(3)*

¹³ Such as a criminal case or PPO hearing, but not the paternity case in which the reimbursement is sought.

father may be ordered to pay up to 100 percent of the expenses. *MCL 722.712(3)*

iii. **Parents Get Married**

The court order must provide that if the parents marry each other after the child is born, the father's obligation for unpaid confinement and pregnancy expenses is abated, subject to reinstatement for good cause.¹⁴ Good cause includes, but is not limited to, dissolution of the marriage. To initiate the abatement, the parents must provide proof of the marriage to the FOC. *MCL 722.712(4)*

The law does not state how long the expenses are eligible for reimbursement. Conceivably, the expenses could be reinstated for as long as the payer lives. Courts should consider whether the statute of limitations or another standard applies.

Expenses apportioned to the mother would normally not be affected by the abatement provisions. The statute does not provide that the expenses apportioned to the mother may be abated upon marriage. However, if the mother is actually ordered to pay the expenses to the father or a third party, the court should consider whether marriage serves to merge obligations owed by the parties to each other and extinguish the debt.¹⁵

4. Enforcement of Uninsured Medical Expenses

a. **Extraordinary Expenses**

The custodial parent can only request enforcement of an uninsured medical expense if the Annual Ordinary Health Care Amount has been exceeded. Non-custodial parents who have paid the bill themselves may request enforcement of each uninsured medical expense.¹⁶ Michigan law (*MCL 552.511a*) outlines the process for enforcing extraordinary uninsured medical expense reimbursement. The FOC will initiate enforcement action if items 1 through 3 below are satisfied.

- i. The parent seeking reimbursement for the uninsured medical expenses must demand payment from the other parent within 28 days after the insurer's final payment or denial of coverage.
- ii. The parent responsible to pay did not pay within 28 days of receiving the demand for payment.

¹⁴ All support orders entered prior to the effective date of this law are considered to contain the provision by operation of law.

¹⁵ See *Sierra v Minnear*, 341 Mich 182; 67 NW2d 115 (1954)).

¹⁶ Michigan law requires the FOC to enforce uninsured medical expenses so long as the parent requesting enforcement follows certain procedures. FOC policies that require a parent to accumulate bills to a certain threshold before enforcing the bills can create a financial hardship. If the FOC has a threshold policy, it should specify a low threshold, such as \$50. The fact that a bill does not meet the threshold should not count against the payee's time for requesting FOC enforcement of the bill should the bill, when combined with other bills, meets the enforcement threshold as long as all other statutory requirements of notice to the payer were met. For example, if a payee has only \$25 in bills for one year, and the FOC enforcement threshold is \$50, that \$25 bill must be enforced whenever the threshold is eventually met.

- iii. The enforcement complaint is submitted to the FOC on or before any of the following:
 - (1) one year after the expense was incurred;
 - (2) six months after the insurer's final payment or denial of coverage (the request for coverage must have been made within two months of the expense); or
 - (3) six months after a parent defaults on paying the expense if the parents had a written agreement outlining how much each parent would pay and a schedule for the payment.
- iv. If all of the above requirements are satisfied, following review to assure that the expenses qualify for reimbursement,¹⁷ the FOC must initiate enforcement against the parent obligated to pay the medical expense. The FOC initiates enforcement by sending the following information to that parent:
 - (1) A copy of the complaint submitted from the parent requesting reimbursement.
 - (2) Notice that if the obligated parent does not pay the bill or object to the complaint within 21 days, the amount of the uninsured medical expense will become a support arrearage, subject to all available support enforcement remedies.
 - (3) Notice that if the parent does file an objection to the complaint within 21 days, the FOC will set a hearing before a judge or referee to resolve the complaint.
- v. If one parent pays the medical expense directly to the other parent, the recipient parent must notify the FOC to avoid further enforcement action against the other parent.
- vi. If the obligated parent does not pay the medical expense and does not file a written objection to the complaint within 21 days, the amount of the medical expense becomes a support arrearage, subject to any enforcement remedy available.
- vii. If the parent files a written objection within 21 days, the FOC must schedule a hearing before a judge or referee to determine the matter. An objection may challenge the necessity of the expense, claim that insurance coverage is available or that the parent already has paid the expense, or raise any similar defenses to the demand for reimbursement. Where a hearing is scheduled, both parents must attend the hearing and should be advised that the Friend of the Court does not represent the interests of either parent.

b. Confinement-Only Expense

A court order that requires a specific payment plan for confinement expenses should be enforced pursuant to the court's directions in that case. [SCAO Administrative Memorandum 2004-04](#) explains how MiCSES is programmed to consider these and any

¹⁷ The FOC review determines if the expense is a qualified uninsured expense and if the annual ordinary health care amount was exceeded. The FOC does not determine if the expense is reasonable or necessary. If the other parent objects that an expense is unreasonable or unnecessary, the court makes the determination. The parent requesting enforcement is responsible for providing the FOC with documentation proving that the annual ordinary amount was exceeded. Parents may use Form 13 to document their medical expenses.

other lump sum arrearages. That memo recommends that courts adopt a local administrative order if they disagree with the programming.

E. REVIEW OF SUPPORT ORDER

1. Statutory Requirement to Review Order

Michigan law requires the FOC to review support orders periodically after final judgment if there are reasonable grounds to believe that previously unavailable dependent health care coverage has become available. *MCL 552.517(1)(b)*

Reasonable grounds to review an order include probable access by an employed parent to dependent health care coverage. If an order requires a parent to maintain dependent health care coverage, and that parent changes health care providers, another FOC review is not required or specifically authorized. Likewise, if one parent's health insurance is cancelled or lost and the other parent provides insurance coverage, another FOC review is neither required nor specifically authorized. If the child is receiving government medical assistance, the FOC must review the order at least once each 24 months¹⁸ unless either of the following applies:

- a. The order requires health care coverage and neither party has requested a review.
- b. The office receives notice from FIA that good cause exists not to proceed with support action and neither party has requested a review. *MCL 552.517(1)(d)*

2. Seeking Modification of a Medical Support Order

a. Support order lacks medical care provisions

The FOC must seek modification when a support order lacks provisions for medical coverage, and either of the following is true:

- i. Either parent has health care coverage available as a benefit of employment at a reasonable cost, or
- ii. Either parent is self-employed, maintains health care coverage for himself or herself, and can obtain health care coverage for the child at a reasonable cost. *MCL 552.517(7)*

b. Review of order warrants modification

When the FOC review shows that a change to the order is necessary, the FOC recommendation should include all of the factors listed in section I, *Information to Include in Support Orders*.

F. CONFIDENTIALITY OF MEDICAL CARE ORDERS

The Health Insurance Portability and Accountability Act (HIPAA) creates national standards to protect the confidentiality of medical records and personal health information. Health plans, health care clearinghouses, and health care providers who conduct certain financial and administrative transactions electronically are bound by these privacy standards even if they contract with others to perform some functions. HIPAA creates stringent guidelines for

¹⁸ Public Act 207 of 2004 changes the requirements in section 517. Effective June 30, 2005, the law will require FOC's to investigate once every 36 months.

releasing confidential health information on an individual, and it specifies penalties for the willful and improper disclosure of private information (\$100-\$250,000 fine / up to 10 years in prison).

The HIPAA law should not interfere with the NMSN process, but employers' concerns about the HIPAA penalties for the improper disclosure of personal health information prompted the federal Office of Child Support Enforcement (OCSE) to author a Policy Interpretation Question (PIQ 2004-03) on the matter. [PIQ 2004-03](#) states that a health plan may disclose protected health information to a IV-D agency pursuant to a NMSN.

There may still be a concern with confidential medical bills being given to the FOC for enforcement or being added to public records (i.e. court records). It is important to be aware of the HIPAA law. Any further guidance from OCSE will supplement this memorandum.

Appendix A: Determining Which Parent Should Maintain Health Care Coverage

1. DO THE PARENTS AGREE ON WHICH PARENT SHOULD MAINTAIN COVERAGE?

If yes, incorporate the agreement as the recommendation. A detailed review is not necessary.

If no, proceed to number 2

2. DOES ONLY ONE PARENT HAVE HEALTH CARE AVAILABLE THROUGH EMPLOYMENT?

If yes, proceed to number 3

If both parents have health care available through employment, proceed to number 4

If neither parent has health care available through employment, proceed to number 5

3. ONLY ONE PARENT HAS COVERAGE AVAILABLE THROUGH EMPLOYMENT. IS THE PARENT’S COVERAGE AT OR BELOW THE REASONABLE COST OF COVERAGE?

If yes, record that as the recommendation

If no, apportion the cost between both parents. If the cost is now at or below the reasonable cost of coverage, record that as the recommendation. This is a deviation from the Manual, so include the reasons for deviating in the order. If the cost is still above the reasonable cost of coverage, note that the cost exceeds reasonable cost. The court will make the final determination of coverage.

4. BOTH PARENTS HAVE COVERAGE AVAILABLE THROUGH EMPLOYMENT AND THEY DO NOT AGREE ON WHO SHOULD MAINTAIN COVERAGE. COMPARE THE PLANS WITH THE FOLLOWING QUESTIONS.

A. Does the child have special health care needs? (high number of prescription drugs, eyeglasses, etc) Does one plan cover these expenses better? If so, choose that plan.

B. If the plans offer similar services, are the services offered close to where the child resides? If there is not a significant difference in services or coverage area, choose the custodial parent’s plan.

5. IF NEITHER PARENT HAS COVERAGE AVAILABLE THROUGH EMPLOYMENT, IS THERE OTHER PRIVATE COVERAGE AVAILABLE TO THE EITHER PARENT?

A. Spouse maintains coverage and is able and willing to cover child on plan

B. Parent is eligible for group coverage

NOTE: The recommendation and order should require the parent to maintain coverage, but allow that obligation to be fulfilled through alternative means. For example, the order could state:

“The (defendant/plaintiff) shall maintain health care coverage for the child(ren). At the option of the (defendant/plaintiff), coverage can be obtained by purchasing it from a private company or by enrolling the child(ren) in coverage available through a family member.”

CHECKLIST

	Plans Available			
Insurer/Plan Name:	Plan A	Plan B	Plan C	Plan D
Person Providing:				
Child/Parent enrolled?	Y / N Y / N	Y / N Y / N	Y / N Y / N	Y / N Y / N
Does Coverage Include:	-Medical -Hospitalization -Acute Care -Chronic Care -Prescriptions -Dental -Orthodontics -Vision/Eye Care -Mental Health -Substance Abuse Other:	-Medical -Hospitalization -Acute Care -Chronic Care -Prescriptions -Dental -Orthodontics -Vision/Eye Care -Mental Health -Substance Abuse Other:	-Medical -Hospitalization -Acute Care -Chronic Care -Prescriptions -Dental -Orthodontics -Vision/Eye Care -Mental Health -Substance Abuse Other:	-Medical -Hospitalization -Acute Care -Chronic Care -Prescriptions -Dental -Orthodontics -Vision/Eye Care -Mental Health -Substance Abuse Other:
Cost of medical & hospitalization coverage: -Total Premium -Adding children -Co-payment -Deductible -Drug co-pay				
Cost to Add other coverage: Dental Vision OTHER:				
Geographic Limits				
Out-of-Network coverage limits				
<p><i>A concentrated effort to determine the appropriate health care coverage will avoid duplicate coverage and unnecessary draining of resources.</i></p> <p><i>If two plans are otherwise equal, assume that the custodial parent is more likely to need and use the services.</i></p>				